

REMARKS

Claims 1-30 remain pending in the instant application. Claims 1-30 presently stand rejected. Reconsideration of the pending claims is respectfully requested. Applicants thank the Examiner for the interview in which the cited art and amendments to claim 1 were discussed. No agreement was reached.

Claim Rejections – 35 U.S.C. § 112

Claims 6-7 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 6 (and thus, claim 7) has been amended to clarify the claimed subject matter.

Claim Rejections – 35 U.S.C. § 103

Claims 1-3, 6-12, and 18-25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Branch (WO 01/093022 A3) in view of Krishnaswamy (US 6,735,774 B1).

Claims 26-30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Branch in view of Krishnaswamy and in further view of Brannock (US 2002/0194313).

Claims 4-5 and 13-17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Branch and Krishnaswamy as applied to claim 1, and further in view of Everything2 (Device Driver Definition).

"A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made." 35 U.S.C. 103(a).

The "mere statement that the claimed invention is within the capabilities of one of ordinary skill in the art is not sufficient by itself to establish prima facie obviousness." MPEP § 2143.01. Furthermore, the mere "fact that references can be combined or modified may not be sufficient to establish prima facie obviousness." *Id.* The tendency to resort to "hindsight" based upon Applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art." MPEP § 2142.

Applicants traverse the rejection of claim 1 because the subject matter sought to be patented as a whole **could not have been** obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. The subject matter could not have been obvious because Krishnaswamy was published only after the application of the instant application (and thus after the date of the invention). Thus, one of ordinary skill in the art at the time of the invention to which the claimed subject matter pertains (artisan) as a matter of simple logic **could not have combined** Krishnaswamy with Branch because the reference **was not available** for the artisan to combine. Accordingly, claim 1 is allowable.

The Office Action concedes that Branch does not explicitly disclose that the exception handler is an operating system exception handler. The Office Action further concedes that Branch and Krishnaswamy do not explicitly disclose that the loading of a set of firmware-based exception filter pointers in the first address space is done prior to OS runtime. The Office Action attempts to remedy this deficiency by asserting that Everything2 discloses loading a device driver prior to OS runtime. Everything2 fails to

remedy this deficiency because it does not disclose that prior to OS runtime, loading a set of firmware-based exception filter pointers into the first address space to replace the set of OS exception handler pointers loaded into the first memory address space, wherein the firmware-based exception filter pointers point to exception filters that are stored in firmware. The real mode drivers loaded before OS runtime do not replace a set of OS exception handler pointers and are not based in firmware. Thus the cited art does not in combination teach a predictable use of cited art elements according to their established functions.

Furthermore, the modification of Branch changes the principle of operation of Branch. Branch, in paragraphs D and E, describes the principle of operation as modifying existing device drivers that are loaded from a CD. Instead the instant application recites revectoring OS handlers to firmware-stored filters. Accordingly, claim 1 is allowable. Independent claims 13, 18, and 22 include similar nonobvious elements as original independent claim 1, and are thus allowable.

With regard to claim 26, Brannock is cited for allegedly resolving the deficiencies of the combination of Branch and Krishnaswamy. However, Brannock is directed to flash devices, which fails to teach, disclose, or fairly suggest a firmware-based exception filter. Accordingly, claim 26 is allowable. Accordingly, Applicants respectfully request that the §103(a) rejections of claims 1, 13, 18, 22, and 26 be withdrawn. The dependent claims are novel and nonobvious over the cited references for at least the same reasons as discussed above in connection with their respective independent claims, in addition to adding further limitations of their own. Accordingly, Applicants respectfully request that the instant § 103 rejections of the dependent claims also be withdrawn.

CONCLUSION

In view of the foregoing remarks, Applicants believe the applicable rejections have been overcome and all claims remaining in the application are presently in condition for allowance. Accordingly, favorable consideration and a Notice of Allowance are earnestly solicited. The Examiner is invited to telephone the undersigned representative at (206) 292-8600 if the Examiner believes that an interview might be useful for any reason.

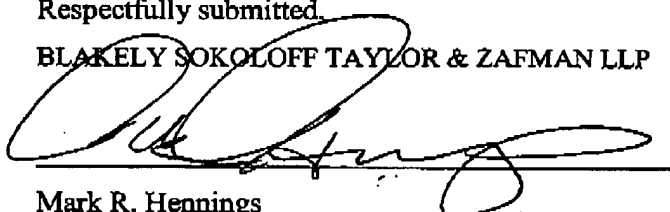
CHARGE DEPOSIT ACCOUNT

It is not believed that extensions of time are required beyond those that may otherwise be provided for in documents accompanying this paper. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a). Any fees required therefore are hereby authorized to be charged to Deposit Account No. 02-2666. Please credit any overpayment to the same deposit account.

Respectfully submitted,

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